92-511

Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1992

STEVEDORING SERVICES OF AMERICA,

Petitioner

v.

ANCORA TRANSPORT, N.V.;
ARMILLA INTERNATIONAL, B.V.;
ARMILLA INTERNATIONAL (LONDON), LTD.;
ARMILLA INTERNATIONAL (HOUSTON), INC.,

Respondents

ON WRIT OF CERTIORARI TO
THE COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does a United States District Court Judge have the discretion to release the *res* attached under Rule B of the Supplemental Rules, when the *res* forms the basis for the court's *quasi-in-rem* jurisdiction, and thereby deprive a plaintiff in Admiralty of his right to appeal the district court's adverse decision on the merits of plaintiff's claim?

LIST OF PARTIES

The caption of this case in this Court contains the names of all the parties.

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DECISIONS BELOW

The decisions of the courts below of which review is sought, beginning with the most recent decision, are:

(1) Stevedoring Services of America v. Ancora Transport, 941 F.2d 1378 (9th Cir., 1991) (APP:7-32), vacating and modifying the earlier opinion in the same case, reported at 884 F.2d 1250 (9th Cir., 1989) (APP:34-61).

(2) The orders vacating the Rule B writ, and denying plaintiff's motion to stay release of the res, of the U.S. District Court for the District of Oregon, SSA v. Ancora Transport, U.S.D.C. Case No. 87-885, and the order denying the motion to stay in the court of appeals, Civil Case No. 87-4129 (APP:1-6).

THIS COURT'S JURISDICTION

The trial court's order vacating the Rule B writ was entered on August 14,

1987, after the show cause hearing held on the same day. SSA filed its notice of appeal on August 25, 1987. SSA obtained a temporary stay preventing release of the res from the chief judge (Judge Owen Panner) of Judge Frye's order of August 14, 1987. The temporary stay was effective through September 9, 1988, the day after Judge Frye was to return from vacation. On her return, Judge Frye refused to continue the stay, but SSA had already filed a provisional request for stay with the court of appeals. After Judge Frye refused to stay release, the court of appeals then granted a stay on September 9, 1987, but on September 14, 1987, the court of appeals reversed itself, and lifted the stay (Orders of U.S. District Court, and Court of Appeals, APP:1-6).

The court of appeals heard arguments on plaintiff's appeal, and issued its first opinion on September 7, 1989. SSA v.

Ancora Transport, 884 F.2d 1250 (9th Cir., 1989) (APP:7-32). The court of appeals held it had lost jurisdiction, rendering plaintiff's appeal moot, when the district court released the res. Plaintiff SSA timely filed a petition for rehearing. On August 7, 1991, two years after issuing their original opinion, the court of appeals vacated its original opinion. SSA v. Ancora Transport, 941 F.2d 1378 (9th Cir., 1991) (APP:33). On August 13, 1991, the Ninth Circuit issued a new opinion, modifying its earlier one, but still held plaintiff's appeal was moot. SSA v. Ancora Transport, 941 F.2d 1378 (9th Cir., 1991) (APP:34-61).

Plaintiff SSA timely filed another petition for rehearing, and an order denying rehearing was entered on June 22, 1992. This court has jurisdiction to review the decision by writ of certiorari under 28 U.S.C. § 1254(1).

STATUTES OR RULES INVOLVED

There is no statute or rule directly involved in the question presented. However, the basis for jurisdiction was premised upon an attachment (garnishment) secured under Rule B(1), Supplemental Rules, Fed. Rules Civ. Pro. The relevant portions of the text are set forth below:

"**Rule B. Attachment and Garnishment: Special Provisions**

"**(1) When Available; Complaint, Affidavit, Judicial Authorization, and Process.** With respect to any admiralty or maritime claim in personam a verified complaint may contain a prayer for process to attach the defendant's goods and chattels, or credits and effects in the hands of garnishees to be named in the process to the amount sued for, if the defendant shall not be found within the district. Such a complaint shall be accompanied by an affidavit signed by the plaintiff or the plaintiff's attorney that, to the affiant's knowledge, or to the best of the affiant's information and belief, the defendant cannot be found within the district. The verified complaint and affidavit shall be reviewed by the court and, if the conditions set forth in this rule appear to exist, an order so stating and authorizing process of attachment and garnishment shall issue. . . . ."

STATEMENT OF THE CASE

1. Facts (and Course of Proceedings):

This was an action in personam in Admiralty commenced by Plaintiff Stevedoring Services of America ("SSA"), a stevedore, against four corporate defendants to recover amounts due for services SSA rendered to the M/V RISAN in San Diego, California in 1986. Pursuant to this in personam action, on August 7, 1987, SSA caused a writ of garnishment to be issued under Rule B of the Supplemental Rules directed to Sunrise Shipping ("Sunrise"), a local husbanding agent for another vessel, the M/V CONTENDER ARGENT, operated by the defendants. Plaintiff SSA contended Sunrise was then holding funds (the "res") belonging to Defendant Armilla International, B.V., who Plaintiff SSA contended owed it money from the 1986 voyage of the M/V RISAN. The defendants are: (1) Ancora Transport, N.V. ("Ancora"); (2) Armilla International,

B.V. ["Armilla (B.V.)"], a foreign corporation from the Netherlands; (3) Armilla International (London), Ltd. ["Armilla (London)"]; and (4) Armilla International (Houston), Inc. ["Armilla (Houston)"] Only after SSA rendered its services and tried to collect its bill did Armilla (B.V.) take the position it had acted as a managing agent for a previously undisclosed principal, namely Ancora (Complaint, CR:1; Amended Complaint, CR:10, Exc:1).[1]

In August 1987, another vessel, the M/V CONTENDER ARGENT, came to the Columbia River to load equipment at the Port of Vancouver (Washington). SSA learned that Armilla (B.V.) had voyage-chartered the M/V CONTENDER ARGENT for the voyage. Armilla (B.V.) contracted with Sunrise to arrange for services for the M/V CONTENDER

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[1] References are to the Clerk's Record ("CR"), the Excerpt ("Exc"), and the two transcripts of the show cause hearing.

ARGENT on the Columbia River. Only after SSA and others threatened legal proceedings in the District of Oregon did Armilla (B.V.) take the position that it was acting as an "agent" for yet another previously undisclosed principal in respect of the M/V CONTENDER ARGENT, this time "Armilla (London)" [Plaintiff's Exhibits 1-5; TR(1):27-29].

While the M/V CONTENDER ARGENT was in the Columbia River, Armilla (B.V.) [not Armilla (London)] caused its Rotterdam bank to make advances to Sunrise Shipping for expenses of the vessel; all funds sent to Sunrise were sent by Armilla (B.V.) from its bank in Rotterdam. No money came from any bank in London. In fact, in telexes Armilla (B.V.) sent before SSA and the other creditors threatened proceedings, Armilla stated it had directed "its banker" to transfer funds to Sunrise [See, e.g., Pl's Exh. 1, p. 3; Pl's Exh. 2, pp. 5-6; Pl's Exh. 3A, pp. 2,

5; Pl's Exh. 3B, pp. 1-3; TR(1):41; TR(2):4-5, 8-10, 14-15, 18]. These funds were advanced to Sunrise so Sunrise could pay the costs in the Columbia River of the M/V CONTENDER ARGENT's visit.

Based on the plaintiff's complaint, motion and supporting affidavits, the district court issued a Rule B writ, and scheduled a show cause hearing for August 14, 1987 (Order, CR:12, Exc:8; Writ, CR:14, Exc:14). On August 13, 1987, the day before the hearing, Armilla (London) entered a "restricted" appearance, and requested pursuant to Supplemental Rule E(4)(f) that the trial court quash the Rule B writ (Restricted Appearance, CR:25, Exc:8).

On August 14, 1987, U.S. District Judge Frye held the show cause hearing. Plaintiff SSA presented evidence, including witnesses. Defendants called no witnesses of their own, but only offered two declarations, one from an officer of

Armilla (B.V.) and another from an alleged officer of Armilla (London), to the effect that the two companies were separate, and the funds in Sunrise's hands belonged to Armilla (London) (Hearing Transcripts 1 and 2[2]; plaintiff's Exhibits 1-7; defendants' Exhibits 1-4, 7-9). SSA contended it proved that Armilla (B.V.) owed it the debt (defendants did not seriously dispute that fact), and that the money Sunrise held was Armilla (B.V.)'s [defendants contended the money belonged to Armilla (London)].

After the hearing, Judge Frye entered a form of order quashing the Rule B writ. The order stated:

> ". . . The court concludes that the plaintiff has not sustained its burden of proving that funds subject to plaintiff's writ of garnishment belong to a debtor of plaintiff.

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[2] The testimony appears in two separate transcripts, whose pages are not consecutively numbered. Transcript #1 is referred to as "TR(1)" and transcript #2 is referred to as "TR(2)."

> Accordingly, the garnishment should be vacated.
>
> "IT IS ORDERED that the writ of garnishment served on Sunrise Shipping Agency, Inc., on August 6, 1986, is hereby vacated. Funds are released to claimant Armilla International (London) Ltd.
>
> "IT IS FURTHER ORDERED that claimant Armilla International (London)'s motion for summary release of attachment is allowed. . ." (Order, APP:1-2).

SSA filed a motion in the trial court to stay release of the funds pending its appeal to the Ninth Circuit (Motion and Affidavit, CR:50). SSA's motion to stay came on for hearing on an expedited basis before presiding Judge Panner, because Judge Frye was on vacation. Judge Panner stayed Judge Frye's order, and release of the funds, until September 9, 1987, the day after Judge Frye was due to return from vacation, and SSA posted a stay bond in the amount of $10,000 in the district court (Orders, CR:55, 56; Stay Bond, CR:54). Judge Panner directed that Judge

Frye should rule on SSA's motion to stay when she returned. Meanwhile, SSA filed a notice of appeal on August 25, 1987 (Notice, CR:52, Exc:24; Corrected Notice, CR:53, Exc:26), and an emergency motion to stay in the court of appeals on August 26, 1987, in case Judge Frye should deny SSA's motion to stay upon her return (Emergency Motion dated August 25, 1987, in Court of Appeals Nos. 87-7383 and 87-4129).

Judge Frye returned on September 8, 1987, and denied the request for stay on the same day, without hearing any argument or giving any reasons (Order, CR:58, Exc:23). SSA immediately informed the court of appeals of Judge Frye's denial, and requested that the court of appeals stay release of the funds. On September 9, 1987, before the funds were released, the court of appeals stayed release of the funds (Order filed September 9, 1987, Exc:28, APP:4). However, on September 14, 1987, the court of

appeals, per Judges Schroeder, Pregerson, and Nelson, reversed itself, and lifted its stay order (Order dated September 14, 1987, filed September 15, 1987, Exc:29, APP:5-6). In the same order, the court of appeals denied SSA's request for a stay while it sought to petition the U.S. Supreme Court for relief.

All SSA needed to prove was that it had a claim against Armilla (B.V.) as an agent for an undisclosed principal, and that the funds garnished were Armilla (B.V.)'s. At the show cause hearing, defendants did not argue that Armilla (B.V.) was not liable. Rather, they argued the funds belonged to Armilla (London), and Armilla (London) was not liable. Defendants produced no evidence that Armilla (London) had officers, employees, a phone, a telex, a bank account, money or even an office. The only company with an office, employees, a phone, a telex, and a bank account was Armilla (B.V.). Defendants

produced no evidence that Armilla (London) was doing business at all [TR:(1)47-50; TR(2):4-6, 8-10].[3]

2. Federal Jurisdiction:

The U. S. District Court for the district of Oregon had jurisdiction over the claim filed by plaintiff SSA because it was an action on a maritime contract. Jurisdiction was premised on 28 U.S. § 1333 in the district court, and general maritime law. When the district court vacated the Rule B writ of garnishment, the Ninth Circuit Court of Appeals then had jurisdiction to review the decision of the district court. Dillin v. United States, 433 F.2d 1091, 1096 (10th Cir., 1970) [order vacating attachments and

[3] The only evidence offered by the defendants that the money Armilla (B.V.) sent to Sunrise belonged to Armilla (London) was two, self-serving telexes sent after plaintiff threatened to garnish the funds in Portland (Defendants' Exhs. 2 and 3, Exc:32-33), and the declarations of the two officers of Armilla (B.V.) and of Armilla (London) (Defendant's Exh. 7 and 8, Exc:34-36).

garnishments is reviewable; court relied on Cohen v. Beneficial Loan Corp., 337 U.S. 541 (1949)]. The Supreme Court has jurisdiction under 28 U.S.C. § 1254(1).

REASONS FOR GRANTING CERTIORARI

The decisions below of the Ninth Circuit on a question of federal maritime law manifestly conflict with the decisions of this court, and depart from the accepted and usual course of proceedings in the lower courts. Rule 10.1(a), (c), Sup. Ct. Rules.

Two opinions have been filed in this case. The first was filed September 7, 1989. In that opinion, the Ninth Circuit panel held that when the res (garnished funds) was released, the trial court lost jurisdiction, and SSA's appeal became moot (even though the funds were released over the objection of Plaintiff SSA, and despite SSA's motion to stay release). That opinion was based on the panel's

misunderstanding of applicable law. The panel said that once the res (garnished funds) was released by the district court, the res could not be "reattached", and quasi-in-rem jurisdiction was lost. 884 F.2d at 1253, APP:20. For that proposition, the panel relied on two cases, Swift & Co. Packers v. Compania Columbian Del Caribe, 339 U.S. 684 (1950), and Polar Shipping, Ltd. v. Oriental Shipping Corporation, 680 F.2d 627 (9th Cir., 1982). Neither case supported the conclusion of the panel. Indeed, in Swift & Co., the Supreme Court acknowledged that a court could reattach the res.

The panel said that "plaintiff has failed to obtain a stay of execution", and the trial court lost jurisdiction. 884 F.2d at 1255 ("Conclusion") (APP:31-32). The panel seemed to imply that SSA failed to do something to obtain a stay. In its briefs on appeal, and in its petition for rehearing from the 1989 opinion, SSA

pointed out it had moved for a stay, in both the district court and in the court of appeals, and posted a stay bond. The district court had denied SSA's motion without giving a reason, and the court of appeals had denied it, citing the case of Lopez v. Heckler, 713 F.2d 1432 (9th Cir., 1983), rev. in part on other grounds, 463 U.S. 1328, 464 U.S. 879 (1983). In Lopez v. Hecler, appellants requested a stay pending appeal of a trial court's decision granting a preliminary injunction. The standard applied by the court in Lopez v. Heckler was the usual standard for such a request for stay; i.e., whether there was a probability of success on the merits, the possibility of irreparable injury, etc. However, that is not the standard to be applied in Admiralty on a motion to stay made to preserve the res. See, Alyeska Pipeline Serv. Co. v. Vessel BAY RIDGE, 703 F.2d 381, 384 (9th Cir., 1983) (Rule C) or Teyseer Cement Co. v. Halla

Maritime Corp., 794 P.2d 472 (9th Cir., 1986) (Rule B).

In any event, the panel's conclusion in the first opinion that the trial court had lost jurisdiction when the funds were released was erroneous. The rule is subject to well recognized exceptions; that is, jurisdiction is not lost if the res is released accidentally, fraudulently or improperly. While generally recognizing the exception, the panel held that the exception did not apply because even though the district court may have erred in denying plaintiff's motion to stay, and in releasing the res (garnished funds), such an error did not constitute "improper release," as that term had been defined by the courts. The panel said the word "improper" meant "in the sense that it was defrauded." 884 F.2d at 1253, APP:22. The panel was wrong. The exception for "improper" release by a clerk, marshal, or a judge has been recognized for over 100

years; it was established by the Supreme Court in the RIO GRANDE, infra.

The exceptions to the rule were originally formulated in the case of The RIO GRANDE, 90 U.S. 458 (1874). In that case, plaintiff libelled a vessel for repairs. At the conclusion of the trial, the trial court ruled in favor of defendant owner and mortgagees, and plaintiff filed his appeal. Thereafter, defendant mortgagees moved for release of the vessel, and the trial court erroneously granted the motion, released the vessel, and the vessel went to sea. The appellees then argued on appeal that the appeal was moot, the trial court having lost jurisdiction over the res. The Supreme Court held that the trial court's error did not deprive it of jurisdiction. The Court said:

> "We do not understand the law to be that an actual and continuous possession of the res is required to sustain the jurisdiction of the court. When the

> vessel was seized by order of the court and brought within its control the jurisdiction was complete. A subsequent improper removal cannot defeat jurisdiction." 90 U.S. at 463.

And, the Supreme Court also said:

> "We hold the rule to be that a valid seizure and actual control of the res by the marshal gives jurisdiction of the subject matter, and that an accidental or fraudulent or improper removal of it from his custody, or a delivery to the party upon security, does not destroy jurisdiction." 90 U.S. at 465.

In U.S. v. Ames, 90 U.S. 35 (1878), the Supreme Court held that it would not order rearrest of a vessel where the owner had posted security in the form of a bond, even though the principal and sureties on the bond thereafter became insolvent pending the appeal, because the vessel had not been released due to fraud or improvidence (the court used the word "improvidence"; see Opinion at p. 42)[4],

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[4] "Improvidently" is defined as "a judgment, decree, rule, injunction, etc., when given or rendered without adequate consideration by the court . . . "

but with the consent of the plaintiff. The Court went on to specify what it meant by "improvidence", and defined it as a "manifest error in the court". 99 U.S. at 42. And, see U.S. v. The THREE FRIENDS, 166 U.S. 1 (1897), where the Supreme Court held that a trial court acted improvidently by releasing a vessel in a forfeiture proceeding upon posting of a bond of insufficient amount over plaintiff's objection, and the Supreme Court directed that the vessel should be recalled and rearrested. 166 U.S. at 68.

In United States v. AN ARTICLE OF DRUG, 529 F.Supp 230 (N.D. Tex., 1981), the district court held that the Marshal's improper release of certain drugs did not deprive the trial court of jurisdiction, noting that jurisdiction over a res is premised on a legal fiction:

> "The Fifth Circuit. . . has declined to myopically employ a

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Black's Law Dictionary, 4th Ed. (1968).

> legal fiction which exists solely to effectuate the adjudication of disputes when it is invoked for the opposite purpose [citation omitted]. This court similarly declines to blindly follow a rule of law that has little relationship to the modern view of in personam jurisdiction." 529 F.Supp. at 233.

The Ninth Circuit has quoted similar language with approval. Farwest Steel Corporation v. Barge Sea Span 241, 769 F.2d 620, 622 (9th Cir., 1985) (fiction of res is "archaic").

The panel in the instant case failed in the 1989 opinion to appreciate the policy behind the rule. Having once obtained jurisdiction over the res at the commencement of the case, the trial court did not lose jurisdiction simply because the res left the jurisdiction, any more than the court would lose in personam jurisdiction over a person properly served at the commencement of the case who, subsequent to service, flees the jurisdiction. A court should decline to reassert

jurisdiction over the res if it is voluntarily released by plaintiff in favor of a bond because a plaintiff should not be permitted to relitigate the same claim more than once.[5] See, e.g., Belcher Co. v. M/V MARATHA MARINER, 724 F.2d 1161 (5th Cir., 1984). But, the purpose of the exceptions to the rule is to a protect a plaintiff who does not voluntarily release the res; i.e., where the release is the result of actions beyond his control, whether it be the fraud of the owner, the error of the marshal, the error of a clerk, or the error of a judge.

In the 1989 opinion, the panel acknowledged the trial court's error (the panel did not acknowledge or discuss the error of the panel of the Ninth Circuit which

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[5] Even if, for example, the plaintiff is disappointed because the amount of the bond posted is insufficient to cover his claim, or the surety becomes insolvent. See, e.g., U.S. v. Ames, supra.

first granted, and then lifted, a stay in September 1987).

Plaintiff SSA timely petitioned for rehearing of the September 1989 opinion. The panel had SSA's petition under consideration for almost two years. Then, in August 1991, the panel vacated its original opinion, having recognized its original analysis was incorrect. The 1991 amended opinion, however, still concluded that the district court lost jurisdiction, and plaintiff's appeal was moot.

In the 1991 opinion, the panel acknowledged that if the trial court had erroneously released the res over Plaintiff SSA's objection, such release would be "improper" as that term is defined, the exception to the rule would apply, and the district court would still have jurisdiction. 941 F.2d at 1382, APP:51. But then, in an about face, the panel said:

> "While an inappropriate release of the res by the district court would be "improper" and thus would not destroy this court's jurisdiction for appeal and remand [citing The RIO GRANDE], we are not prepared to hold that the district court's release in this case was in error." 941 F.2d at 1382, APP:51.

The panel said that the district court, after the show cause hearing, had found that SSA had not met "its burden [to] show there was a connection between the garnished funds and the defendant sufficient to confer personal jurisdiction." 941 F.2d at 1382, APP:51-52. The court then concluded that jurisdiction was therefore lacking. 941 F.2d at 1382, APP:52.

The 1991 opinion is at least as erroneous as the original opinion, and in two important respects, and is even more ominous for Rule B or Rule C plaintiffs than the prior opinion.

First, the panel was simply incorrect when it said the district court "found"

that there was "no connection between the garnished funds and defendant sufficient to confer personal jurisdiction." The district court made no such finding at all. The only finding of the district court was:

> "The court concludes that the plaintiff has not sustained its burden of proving that the funds subject to plaintiff's garnishment belong to a debtor of plaintiff." Order dated August 14, 1987, p. 1, lines 23-26, Exc:20, APP:1-2.

The district court's sole finding was that SSA had not proven that the funds garnished belonged to Armilla B.V., SSA's debtor. This panel so noted in its statement of the facts:

> "After a hearing the district court ruled that SSA failed to show that the funds belonged to its debtor..." 941 F.2d at 1380, APP:42-43.

Thus, the alleged "finding" of the district court regarding jurisdiction is simply non-existent.

If the panel meant that Judge Frye's conclusion that the garnished funds did not belong to SSA's debtor necessarily implied a finding of no jurisdiction, then the panel was also clearly in error, both on the facts and the law. Appellees readily admitted in the trial court and on appeal that the funds belonged to one of the defendants, namely Armilla (London). SSA asserted that a different defendant [Armilla (B.V.)] owned the funds. But, there was no question that the district court had quasi-in-rem jurisdiction because it had jurisdiction over property of at least one defendant. Atkins v. Fiber Disintegrating Co., 85 U.S. 272, 304, 21 L.Ed. 841 (1874).

Second, if the panel meant that just because the district court found that SSA had not established (to the district court's satisfaction) a claim to the funds garnished (i.e., had not established that the funds belonged to SSA's debtor), that

the district court had the discretion to deny SSA's motion to stay, and therefore deny SSA's right to appeal, then the effect of the panel's opinion is catastrophic indeed. It means that if a district court rules against a Rule B or Rule C plaintiff at a preliminary (show cause) hearing under Rule E, or even after a trial on the merits, the district court has the discretion to deny the plaintiff's motion to stay, and deprive the plaintiff of an appeal of the district court's ruling on the merits of the claim. Because, if the district court denies a plaintiff's motion to stay, and releases the res, then the court of appeals will dismiss the appeal as moot.

The Ninth Circuit refused to consider SSA's appeal on the merits, even though SSA made the motion to stay in the district court (and court of appeals), and the district court had given no reason for denying it. Indeed, SSA contends the

district court had no discretion to deny it since the motion was timely made, and SSA posted a stay bond. In its 1991 opinion, the panel still said the result was "no unfair surprise" to SSA because SSA had advised the district court in its motion to stay that if the district court failed to grant the stay, the district court could lose jurisdiction, and SSA's appeal could be dismissed. 941 F.2d at 1382, APP:50. But, that was precisely the point. SSA warned the district court that failure to grant the stay would jeopardize jurisdiction and plaintiff's appeal, but the district court still released the res anyway.

The panel did dispute the fact that:

1. SSA timely and properly moved in the district court and court of appeals to stay release of the res (garnished funds) so that SSA could appeal Judge Frye's decision holding the garnished funds did not belong to Armilla (B.V.);

2. When Judge Panner allowed SSA's motion on condition that SSA post a stay bond as security, SSA did so properly and timely;

3. SSA promptly notified the court of appeals when Judge Frye unexpectedly and improperly reversed Judge Panner, and released the res, and the court of appeals initially stayed release of the res;

4. The court of appeals later denied the motion to stay, but did so based on an incorrect legal analysis.

The question that the panel of the Ninth Circuit never addressed was: What more was SSA supposed to do? As the panel correctly concluded, there are only two(2) ways a Rule B plaintiff, who has suffered an adverse ruling at the trial level, can prevent the court from losing jurisdiction, and perfect an appeal. First, plaintiff can sue a defendant in personam if plaintiff can establish personal jurisdiction. Frequently, however, a plaintiff

cannot establish sufficient contacts between the forum and the defendant to establish personal jurisdiction; indeed, SSA was not able to do so here.[6] Second, plaintiff may be able to locate property of a defendant in the forum which can support quasi-in-rem jurisdiction. See, court's discussion at 941 F.2d 1381-1384, APP:45-61.

In this case, plaintiff sought to preserve quasi-in-rem jurisdiction by moving to stay release of the funds. It was no surprise to SSA that the district

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[6] Such circumstances are not infrequent, particularly in the maritime industry, where a charterer is a foreign business (which may change corporate form yearly), which may visit the United States on only an irregular basis, often visiting an East Coast port one year and a West Coast port the next year in a different corporate form. It is not unusual for a plaintiff to search for months, only to find an asset to attach in one district (e.g., a Gulf port) to pay a claim which arose from a visit by a defendant in another district (e.g., an East Coast port), but there are insufficient contacts between the defendant and the district in which the asset is found to establish personal jurisdiction.

court's release of funds would deprive the district court of jurisdiction; but it was a complete surprise to SSA that the trial court (and the court of appeals) would deny a proper and timely motion to stay, particularly after SSA apprised the courts of the consequences of doing so.[7] And, it is fundamentally unfair that plaintiff moved to stay release of the funds so the district court's quasi-in-rem jurisdiction would be preserved, just as the Ninth Circuit instructed should be done in Aleyeska and Teyseer, but the trial court (and then the court of appeals) failed to grant the motion.

If the Ninth Circuit was saying in the 1991 Opinion that the trial court has the discretion to deny a motion to stay just

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[7] And, it was incredible that the trial court and court of appeals would ignore their own precedent; Aleyeska Pipeline Co. v. Vessel BAY RIDGE, 703 F.2d 381 (9th Cir, 1983); Teyseer Cement Co. v. Halla Maritime Corp., 794 P.2d 472 (9th Cir., 1986).

because the trial court makes an adverse determination on the merits, the net effect of the panel's analysis is that a trial court can deny a Rule B or Rule C plaintiff the right of appeal, at least in those cases where plaintiff cannot establish a separate and independent basis for personal jurisdiction over the defendant. In the instant case, the district court ruled on plaintiff's claim in a show cause hearing. But, the panel's logic applies equally to a motion to stay made after a trial on the merits. Assume a Rule B or Rule C plaintiff proceeds to trial on the merits, and the trial court rules adversely to plaintiff, holding either that plaintiff failed to establish the underlying claim (e.g., the debt), or failed to establish that the property attached belonged to the defendant-debtor. If the plaintiff wants to appeal the trial court's decision, then plaintiff needs to move to stay release of the res. Does the

trial court have the discretion to deny the motion to stay, effectively denying plaintiff his appeal? The panel's 1991 opinion implies that the trial court can deny the motion to stay because it ruled adversely to Plaintiff SSA on the merits of the claim.

SSA in this case had the right to appeal the trial court's vacation of the Rule B attachment. In THE PANAGHIA KATHARIOTISA, 165 F.2d 430, 431 (3rd Cir., 1948), a possessory suit in admiralty, a district court ordered release of the vessel upon posting of a bond. The court of appeals held the order releasing the vessel was appealable because it terminated the possessory proceeding as to the vessel. In THE ATTUALITA, 238 F. 909, 910 (4th Cir., 1916), the court of appeals held an order releasing a vessel on the grounds that the vessel was under requisition by a foreign government was appealable because the order terminated the proceeding. See,

also, Dillin v. United States, supra, at 1096 (order vacating attachment and garnishment is reviewable, citing Cohen v. Beneficial Loan Corp., supra, at 541). The trial court's holding in the instant case was that the garnished funds did not belong to SSA's debtor [Armilla (B.V.)]; that was a ruling "on the merits," and had the effect of not only causing Plaintiff SSA's garnishment to be vacated, but also, absent a stay, depriving the court of jurisdiction, and SSA of its appeal.

Plaintiff SSA appealed, timely moved for a stay, and posted a stay bond. That is all SSA was required to do. SSA believes it was then entitled to a stay as a matter of right, and the trial court did not have discretion to deny the stay. If the Ninth Circuit is now holding that a trial court has the discretion to deny a motion to stay, then a Rule B or Rule C plaintiff's right of appeal also lies within the trial court's discretion.

A Rule B or Rule C plaintiff has a right to appeal a trial court's adverse decision. Whether or not a plaintiff has a constitutional right to an appeal, once a right of appeal is extended, as it has been in the federal system, due process and equal protection of the laws prohibit the arbitrary or discriminatory denial of the right of appeal. In Re: Brown, 439 F.2d 47, 51, (3rd Cir,. 1971). A Rule B plaintiff cannot be denied a right of appeal that would otherwise be available to a Rule B defendant, without violating the plaintiff's constitutional rights. If the trial court can deny the motion to stay, it is denying plaintiff's right to appeal.

Subsequent events have proven that SSA's fears are well-founded. One month after the panel's 1991 decision, a U.S. District Court again denied an admiralty plaintiff a stay after an adverse determination on the merits, and the Ninth Circuit refused

an emergency request by that plaintiff for a stay, jeopardizing that plaintiff's appeal. On September 16, 1991 Liverpool & London Steamship Protection and Indemnity Association, Ltd. filed a complaint in rem in the United States District Court, for the Western District of Washington, Case No. CV91-1287-C, naming twenty-three (23) vessels as in rem defendants. The action was brought pursuant to Rule C of the supplemental rules. The plaintiff asserted a maritime lien upon each defendant vessel for unpaid insurance premiums. Four (4) vessels were arrested.

The defendant vessels requested, pursuant to Rule E(4)(f), that a hearing be held to show cause why the arrests should not be vacated. The trial court vacated the arrests, holding that Admiralty law did not provide a maritime lien for such insurance premiums. Immediately, plaintiff filed a motion for stay and posted a stay bond (and offered to

post additional security if the trial court so required). The trial judge denied the motion for stay.

The plaintiff then filed a notice of appeal and an emergency motion in the Ninth Circuit asking it to stay the order vacating the arrests. The Ninth Circuit, per justices Canby and Brunetti (the latter is the justice who wrote the 1989 and 1991 SSA opinions), per order filed September 23, 1991, denied plaintiff's emergency motion to stay. See, Liverpool & London Steamship Protection and Indemnity Association Ltd. v. M//V Aleutian Falcon et al., Ninth Circuit Case No. 91-36009, Order dated September 23, 1991. Subsequently, the Ninth Circuit issued an order directing the parties to address in their briefs on appeal the question of whether the district court had lost jurisdiction, rendering plaintiff Liverpool's appeal moot. See, Ninth

Circuit Case No. 91-36009, Order dated September 27, 1991.

Justices Canby and Brunetti, as well as the trial judge, in Liverpool & London v. M/V Aleutian Falcon, apparently relied on the appellate opinion in this case, SSA v. Ancora, for the proposition that they had the authority to deny Plaintiff Liverpool's motion to stay. This is a good example of precisely what SSA feared would happen. The decision in the instant case is resulting in disaster for Rule B and Rule C plaintiffs in other cases. Rule B and Rule C plaintiffs who properly move for stays are entitled to stays; the trial court has no discretion to deny the motion just because the trial court does not think plaintiff has a meritorious claim. If it were otherwise, a plaintiff will be denied the right to appeal the district court's ruling on the merits to a court of appeals.

CONCLUSION

The decision of the Ninth Circuit should be vacated, this court should hold that the district court did not lose jurisdiction, and SSA's appeal is not moot, and the appeal should be remanded to the Ninth Circuit and considered on its merits.

Respectfully submitted,

Gordon T. Carey, Jr.
Attorney for Petitioner
Member of Supreme Court Bar
since October 9, 1984

APPENDIX

IN THE UNITED STATES DISTRICT COURT

FOR THE STATE OF OREGON

STEVEDORING SERVICES OF AMERICA, a Washington corporation,	)	Case No. 87-885-FR
Plaintiff,	)	
v.	)	ORDER VACATING WRIT OF GARNISHMENT AND RELEASING FUNDS TO CLAIMANT
ANCORA TRANSPORT, N.V., d/b/a ARMILLA INTERNATIONAL, B.V. a foreign corporation and ARMILLA INTERNATIONAL, B.V., d/b/a ANCORA TRANSPORT, N.V., a foreign corporation,	)	
Defendants.	)	

This matter came on for a hearing August 14, 1987, requiring plaintiff to show case why the writ of garnishment should not be vacated, Fed. R. Civ. P. Supp. E(4)(f), and on claimant Armilla International (London)'s motion for summary release of attachment. Fed. R. Civ. P. 64; Or. R. Civ. P. 81 C(1). The court concludes that the plaintiff has not sustained its burden of proving that funds subject to plaintiff's writ of

garnishment belong to a debtor of plaintiff. Accordingly, the garnishment should be vacated.

IT IS ORDERED that the writ of garnishment served on Sunrise Shipping Agency, Inc., on August 6, 1986, is hereby vacated. Funds are released to claimant Armilla International (London) Ltd.

IT IS FURTHER ORDERED that claimant Armilla International (London)'s motion for summary release of attachment is allowed.

IT IS FURTHER ORDERED that a ruling on claimant's motion for expenses and attorney fees is deferred until affidavits are presented documenting the amounts requested.

DATED this 14th day of August, 1987.

/s/ HELEN J. FRYE
U.S. District Court Judge

CIVIL MINUTE ORDER

Case No. CV87-885-FR **Date:** 9/8/87

Title: Stevedoring Services of America v. Ancora Transport, et al.

DOCKET ENTRY:

Record of order denying pltf's request for reconsideration. Order denying pltf's request for a stay of this Court's order vacating the writ of garnishment. . .

PRESENT:

HON. Helen J. Frye, Judge

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STEVEDORING SERVICES OF AMERICA, A Washington corporation,	)	No. 87-7383
	)	DC# CV-87-885-FR Oregon (Portland)
Petitioner,	)	
v.	)	ORDER
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON,	)	
Respondent,	)	
and	)	
ARMILLA INTERNATIONAL (HOUSTON), INC., et al.,	)	
Real Parties in Interest.	)	

Before: SCHROEDER, Circuit Judge

Counsel for the real parties in interest has advised the court that the real parties do not intend to respond to petitioner's motion for stay pending disposition of the mandamus petition. The motion for stay is temporarily granted, pending further order of the court.

APP:5

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STEVEDORING SERVICES OF AMERICA, A Washington corporation, Petitioner, v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON, Respondent, and ARMILLA INTERNATIONAL (HOUSTON), INC., et al., Real Parties in Interest.	No. 87-7383 DC# CV-87-885-FR Oregon (Portland)
STEVEDORING SERVICES OF AMERICA, A Washington corporation, Plaintiff-Appellant, vs. ANCORA TRANSPORT,N.V., ARMILLA INTERNATIONAL N.V. and ARMILLA INTERNATIONAL (LONDON) LTD., each d/b/a itself or one of the above-named defendants Defendants-Appellees.	No. 87-4129 DC# CV-87-885-FR Oregon (Portland) ORDER

Before: SCHROEDER, PREGERSON and NELSON, Circuit Judges

The motion of Stevedoring Services of America for a stay pending disposition of its petition for a writ of mandamus and its appeal is denied. See LoPez v. Heckler, 713 F.2d 1432, 1435 (9th Cir.), rev'd in part on other grounds, 463 U.S. 1328, 464 U.S. 879 (1983). . . .

APP:7

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STEVEDORING SERVICES OF AMERICA, a Washington corporation,	)	Nos. 87-4129; 87-4195
Plaintiff-Appellant,	)	
v.	)	D.C. No. CV-87-885-FR
ANCORA TRANSPORT, N.V., ARMILLA INTERNATIONAL, N.V., ARMILLA INTERNATIONAL (LONDON), LTD, and ARMILLA INTERNATIONAL (LONDON), LTD., foreign corporations, each d.b.a. itself or one of the above-named defendants,	)	OPINION
Defendants-Appellees.	)	

Appeal from the United States District Court, for the District of Oregon
Helen J. Frye, District Judge, Presiding

Argued and Submitted
June 29, 1989-Portland, Oregon

Filed September 7, 1989

Before: Warren J. Ferguson, Melvin Brunetti, and Diarmuid F. O'Scannlain, Circuit Judges.

Opinion by Judge Brunetti

SUMMARY

Jurisdiction/Courts and Procedure/Admiralty

Dismissing the appeal as moot, the court held that an appeal is rendered moot under F. R. Civ. P., Rule C Supplemental Rules for Certain Admiralty and Maritime Claims actions for in rem attachment, where the court has released the vessel or disbursed funds received from the sale of the vessel.

Appellant Stevedoring Services of America had a contract with Armilla International (Rotterdam) to unload cargo from a vessel. When Armilla refused to pay the outstanding balance, SSA garnished funds held by Sunrise Shipping, agent for another vessel. The funds represented payment by Armilla (Rotterdam) as agent for Armilla (London). The district court ordered the issuance of a writ of garnishment and a temporary restraining order pursuant to F. R. Civ. P. Rule B. Later after a hearing, the district court

ruled that SSA had failed to show that the funds belonged to its debtor and released the funds. SSA appealed and posted a bond. District Judge Panner stayed the release of attachment pending the return from vacation of Judge Frye who had released the garnished funds. Judge Frye subsequently denied a motion for reconsideration and lifted the stay.

[1] SSA was free to assert both quasi in rem and in personam jurisdiction by serving appellees not in that district but in the state, but SSA alleged no facts in its complaint asserting that appellees were subject to personal jurisdiction, nor did they properly serve them to obtain personal jurisdiction. [2] SSA asked the court to reinstate the Rule B writ and allow it to try its claim in quasi in rem jurisdiction, but the court cannot reattach the res once it is gone. [3] SSA claimed that by posting the stay bond as ordered by District Judge Panner when he

stayed District Judge Frye's vacation of the writ of garnishment and by obtaining a stay in the Ninth Circuit, that even though there is no res, the case is not moot because jurisdiction has been preserved. The posting of the bond was only a condition of obtaining the stay. The bond itself does not create jurisdiction, and once the stay was vacated, the stay bond was released and of no further force or effect. [4] Stevedoring, by posting a bond, cannot confer jurisdiction on the court where it does not otherwise exist.

COUNSEL

Gordon T. Carey, Jr., Portland, Oregon, for the plaintiff-appellant.

Paul N. Wonacott, Wood, Tatum, Mosser, Brooke & Landis, Portland, Oregon, for the defendants-appellees.

OPINION

BRUNETTI, Circuit Judge:

Stevedoring Services of America (SSA)

appeals the district court's release of garnishment of funds held by Sunrise Shipping. The district court found that the garnished funds did not belong to SSA's debtor. We dismiss the appeal as being moot.

I.

FACTS AND PROCEEDINGS

SSA had a stevedoring contract to unload cargo from the vessel M/V RISAN in San Diego from October 30 to November 4, 1986. An outstanding balance of $59,000 remains on the contract for services and Armilla (Rotterdam) has refused to pay. Appellees contend that SSA's contract was with Ancora Transport, N.V., a Netherlands Antilles corporation, which was RISAN's charterer, with Armilla (Rotterdam) acting as agent. SSA contends that Armilla (Rotterdam) never disclosed that Ancora was the principal, that all its negotiations were with Armilla (Rotterdam), and that it was only after it rendered

services that Armilla (Rotterdam) took the position it had acted as a managing agent for Ancora. In fact, SSA alleges that Armilla (Rotterdam) told them that its agent in the U.S. was Armilla (Houston), leading them to believe that Armilla (Rotterdam) was the principal.

SSA garnished funds held by Sunrise Shipping, the husbanding agent for the vessel M/V CONTENDER ARGENT, docked at the time at the Port of Vancouver, Washington. The funds represented payment by Armilla (Rotterdam) as agent for Armilla (London). SSA contends, however, that Armilla (London) is not an actual company as it has no offices, no employees, no bank account and no evidence that it exists. However, the appellees claim that Armilla (London) is a legitimate company, that the funds garnished by SSA are not funds of Ancora, and thus, not proper funds to attach for SSA's payment of services for the M/V RISAN.

The district court ordered the issuance of a writ of garnishment and a temporary restraining order pursuant to Rule B of the Federal Rules of Civil Procedure Supplemental Rules for Certain Admiralty and Maritime Claims (Rule B) and issued an order to show cause. After a hearing the district court ruled that SSA failed to show that the funds belonged to its debtor and released the funds. SSA appealed and at the same time, asked the district court to reconsider its ruling pending additional discovery or in the alternative for a stay and posted a stay bond. District Judge Panner stayed the release of attachment pending the return from vacation of Judge Frye who had released the garnished funds. Judge Frye subsequently denied the motion for reconsideration and lifted the stay. This court stayed the matter temporarily pending disposition of SSA's petition for mandamus, then denied the stay and the

writ of mandamus and suggested that the appeal was untimely because it was filed before the motion to reconsider. We ultimately decided that SSA's appeal was not untimely, that the motion for reconsideration did not toll the filing time for notice of appeal, and denied appellees' motion to dismiss for lack of jurisdiction without prejudice to renew it in its answering brief on appeal.

SSA appealed the district court's ruling and alleged that Armilla (Rotterdam) was liable to SSA as an agent for an undisclosed principal. SSA further contends that the trial court abused its discretion in not allowing further discovery and alleges a due process violation if the appeal is dismissed.

II.

DISCUSSION

A. Jurisdiction

1. Appellate Jurisdiction

First, this court has jurisdiction to

determine jurisdiction over the parties or the subject matter of a suit. Ilan-Gat Engineers, Ltd., A.G./S.A. v. Antigua Intern. Bank, 659 F.2d 234, 239 (D.C. Cir. 1981) (citing United States v. United Mine Workers, 330 U.S. 258, 290 (1947)). Also, we may hear appeals from an order quashing a writ of attachment. Swift & Co. Packers v. Compania Colombiana Del Caribe, 339 U.S. 684, 688-89 (1950) (order vacating attachment reviewable under collateral order doctrine); PolarShipping, Ltd. v. Oriental Shipping Corporation, 680 F.2d 627, 630 (9th Cir. 1982) (dismissal of action vacating attachment was appealable); Chilean Line, Inc. v. United States, 344 F.2d 757, 759 (9th Cir. 1965) (denial of attachment has same effect as vacating of previously granted attachment and is appealable as property may be irrevocably lost by the time the issue is resolved at trial).

2. Jurisdiction Over the Parties.

SSA began its action against Armilla (Rotterdam) by process of maritime attachment levied against alleged Armilla (Rotterdam) assets that were being held by Sunrise Shipping for servicing the M/V CONTENDER ARGENT. Maritime attachment procedure is governed by Rule B which provides (in part):

> With respect to any admiralty or maritime claim in personam a verified complaint may contain a prayer for process to attach the defendant's goods and chattels, or credits and effects in the hands of garnishees to be named in the process to the amount sued for, if the defendant shall not be found within the district.... Supplemental process enforcing the court's order may be issued by the clerk upon application without further

order of the court.

Fed. R. Civ. P. Supp. Rules for Certain Admir. and Maritime Claims Rule B(1) (West 1989). Maritime attachment has two purposes: I) to obtain jurisdiction of the respondent in personam through his property and 2) to assure satisfaction of any decree in libelant's favor. Polar Shipping Ltd., 680 F.2d at 636-37. Although jurisdiction achieved through maritime attachment is denominated "in personam," it is clear that, absent personal service or an appearance by defendant, the judgment had is in the nature of quasi in rem. Teyseer Cement Co. v. Halla Maritime Corp., 794 F.2d 472, 477 (9th Cir. 1986); East Asiatic Co., Ltd. v. Indomar, Ltd., 422 F. Supp. 1335, 1341 (S.D.N.Y. 1976). Quasi in rem proceedings are begun by attachment or other seizure of the property when the court has no jurisdiction over the person of the defendant, but has jurisdiction over a

thing belonging to him or over a person who is indebted to, or owes a duty to the defendant. Teyseer, 794 F.2d at 477; Belcher Co. of Alabama, Inc. v. M/V Maratha Mariner, 724 F.2d 1161, 1163-64, (5th Cir. 1984); East Asiatic Co., Ltd., 422 F. Supp. at 1339.

In admiralty, as in civil law, the court's in personam jurisdiction over a defendant depends upon the latter's contacts with the forum and the correct service of process, East Asiatic Co., Ltd, 422 F.Supp. at 1339, and must meet the constitutional requisites of due process. Armada Supply Inc. v. Wright, 858 F.2d 842, 848-49 (2nd Cir. 1988). This issue was not dealt with in the district court. The district court only asserted quasi in rem jurisdiction over the defendants through the garnishment of the funds held by Sunrise Shipping.

[1] While it is true that SSA was free to assert both quasi in rem and in

personam jurisdiction by serving the defendants not in that district but in the state, SSA alleged no facts in its complaint asserting appellees were subject to personal jurisdiction of the court, nor did they properly serve them to obtain personal jurisdiction. SSA says it served appellees by telex as directed by the district court; however, it takes more than telex service to gain personal jurisdiction of appellees. Appellees made a limited appearance in the district court to specifically address the garnishment and "to reserve challenges to jurisdiction later" and so did not waive their right to protest personal jurisdiction. They also alleged no permissive counterclaims which might subject them to the jurisdiction of the court. See Teyseer, 794 F.2d at 478; Trans-Asiatic Oil Ltd., S.A. v. Apex Oil Co., 804 F.2d 773, 778-79 (1st Cir. 1986). "Even if service is made on an appropriate corporate agent, it is

ineffective unless the corporation is subject to suit in the state where service is made." C.Wright, Federal Courts, at 417 (West 1983); see World Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980).

B. Mootness

[2] SSA asks us to reinstate the Rule B writ and allow it to try its claim, however, in quasi in rem jurisdiction, we cannot reattach the res once it is gone. See Swift & Co. Packers, 339 U.S. at 689; Polar Shipping, 680 F.2d at 637 ("A ship may be here today and gone tomorrow, not to return for an indefinite period, perhaps never."). This is no unfair surprise to SSA. In its motion for reconsideration and to stay the vacation of the attachment in the district court, SSA stated "[a] stay is necessary so the court can preserve its quasi in rem jurisdiction, and so the court of appeals will have jurisdiction of an appeal."

Appellees contend that this case is

now moot because the attachment was lifted and no basis for jurisdiction over them remains. This argument has merit. "[T]he central question of all mootness problems is whether changes in the circumstances that prevailed at the beginning of litigation have forestalled any occasion for meaningful relief." IBTCWHA, Local Union No. 2702 v. Western Air Lines, Inc., 854 F.2d 1178, 1178 (9th Cir. 1988) (injunction to prevent merger moot on appeal when stay was lifted and merger took place)(citation omitted).

Under Rule C of the Federal Rules of Civil Procedure Supplemental Rules for Certain Admiralty and Maritime Claims actions for in rem attachment, where the court has released the vessel or disbursed funds received from sale of the vessel, the appeal was rendered moot. Farwest Steel Corporation v. Barge Sea-Span, 241, 769 F.2d 620, 621 (9th Cir. 1985) ("Under the prevailing rule, the release or

removal of the res from the control of the court will terminate jurisdiction, unless the res is released accidentally, fraudulently, or improperly."); Taylor v. TracorMarine, Inc., 683 F.2d 1361, 1362 (11th Cir. 1982) (where the res is no longer before the court, its in rem jurisdiction is destroyed, and any appeal from its decision is rendered moot) cert. denied, 460 U.S. 1012 (1983); American Bank of Wage Claims v. Registry of Dist. Court of Guam, 431 F.2d 1215, 1218 (9th Cir. 1970) (same). The Ninth Circuit has applied this rule to actions under Rule B as well as Rule C. See Teyseer, 794 F.2d at 476. The exception to the rule does not apply here as SSA does not allege that the res was released accidentally, fraudulently or "improperly" in the sense that it was defrauded. Improper here does not mean error by the district court. See Alyeska Pipeline Serv. Co. v. Vessel Bay Ridge, 703 F.2d 381, 384 (9th Cir 1983)

cert. dismissed. 467 U.S. 1247 (1984).

[3] In Teyseer Cement Co. v. Halla Maritime Corp., 794 F.2d 472 (9th Cir. 1986), the plaintiff argued that the action was in personam and the release of the security was irrelevant. Teyseer, 794 F.2d at 476. As here, the jurisdiction in Teyseer was also obtained by a Rule B writ of attachment, and the defendant in that case appeared specially under Rule E of the Supplemental Rules. Id. We held that because the district court had released the res, they could render no relief to the plaintiff if they remanded to the district court because the security had been released. Teyseer had not sought a stay of the order. Because the defendant appeared specially, the court concluded it had no personal jurisdiction of the defendant. The filing of a maritime in personam claim is not the equivalent of personal jurisdiction over the party. "Attachment provides a limited substitute for the

[personal jurisdiction over the party] and the release of attached property affects only this [personal] jurisdiction." Id.

> When the sole basis of jurisdiction over a defendant is quasi in rem, the court derives its jurisdiction over the defendant solely from its authority over the attached property or its substitute security. Once that property or its substitute security is released, the court has no jurisdiction over the defendant.

Teyseer, 794 F.2d at 477.

[4] SSA claims to have preserved in rem jurisdiction on appeal by complying with the rule announced in Alyeska Pipeline Service Co. v. Vessel Bay Ridge, 703 F.2d 381, 385 (9th Cir. 1983), cert. dismissed, 467 U.S. 1247 (1984), and followed by Teyseer, 794 F.2d at 475, 478. Alyeska stated that:

> When plaintiffs choose to proceed in rem they must take the necessary precautions to ensure that jurisdiction of the court is preserved. Plaintiffs always have the option of bringing these actions in personam as well as in rem, which would foreclose the loss of jurisdiction. Plaintiffs can also ask the trial judge to stay imposition of the judgment until they can move to preserve the jurisdiction of the court. If plaintiffs fail to exercise either of these options, they still have a chance to preserve jurisdiction by posting their own security before the security of the defendant is released.

Alyeska, 703 F.2d at 385 (emphasis added). Teyseer summed this up by stating at the conclusion of the opinion that

> when, as here, a plaintiff (1) asserts no basis for personal jurisdiction over a defendant other than the defendant's appearance, secured by a Rule B attachment; (2) the district court dismisses the action and releases the security; and (3) the defendant fails to obtain a stay of execution of the judgment or to post a supersedeas bond, the district court has been rendered powerless to impose a judgment in the event of a remand.

Teyseer, 794 F.2d at 478. It is the disjunctive language "fails to obtain a stay of execution of the judgment or to post a supersedeas bond" which has caused the confusion for SSA here. SSA cites this rule as giving a plaintiff three "choices" or methods to preserve jurisdiction in an in rem proceeding.

> First, SSA could move to stay release of the security. Second, SSA could try to establish in personam jurisdiction. Third, SSA could post a "supersedeas" bond, if appropriate.

SSA claims that by posting the $10,000 stay bond as ordered by District Judge Panner when he stayed District Judge Frye's vacation of the writ of garnishment and releasing of the funds held by Sunrise Shipping, and that when it obtained a stay in the Ninth Circuit, that it complied with its third choice. Thus, even though there is no "res" SSA contends the case is not moot as jurisdiction has been preserved. Appellant misunderstands the nature of "posting security." The posting of the $10,000 stay bond was only a condition of obtaining the stay. The bond itself does not create jurisdiction and once the stay was vacated, the stay bond

is released and of no further force or effect.

SSA, noting its confusion, states in a footnote to its citation to Alyeska that:

> This author and others have tried to determine precisely what this court meant by "post a bond." . . . However, how can an in rem plaintiff post a bond if the vessel,or substitute security, is released? Similarly, how can a quasi in rem plaintiff post a bond after the attachment is vacated (other than a stay bond). Even if plaintiff posts a bond, what purpose does it serve? Supersedeas bonds are usually posted by defendants to forestall execution on a judgment pending appeal. See Rule 62(d), FRCP [sic].

SSA has seized upon the language in Alyeska as a salve for the vacation of the writ and the release of the res. As unclear as the language is, it is not susceptible to the appellant's interpretation.

A supersedeas bond is filed to obtain a stay of execution of the judgment. The effect of failure to file a supersedeas bond is that the execution of the judgment is not stayed pending appeal. See J. Moore's Federal Practice 2d ed. § 207.02 (1987). Under Fed. R. Civ. P. 62(d), when an appeal is taken "the appellant by giving a supersedeas bond may obtain a stay...." The stay issued by the court is only effective when the supersedeas bond is filed and approved by the court, and is only a condition to obtaining the stay.

[5] To clarify plaintiffs options in a Rule B case we must look at the origin of the rule in Alyeska. In so far as the language in Alyeska indicates that if

plaintiffs failed to exercise either of the in personam or stay options, they still have a chance to preserve jurisdiction by "posting their own security before the security of the defendant is released," it is dictum without authority. Plaintiff, by posting a bond, cannot confer jurisdiction on the court where it does not otherwise exist.

Alyeska relied on language in Canal Steel Works, Inc. v. One Drag Line Dredge, 48 F.2d 212 (5th Cir.), cert. denied, 284 U.S. 647 (1931). Alyeska, 703 F.2d at 384. The court in Canal Steel stated the appeal in that case was moot because

> [a]ppellant appealed, but did not sue out a supersedeas, and gave bond only for costs....[B]y the failure of the appellant to obtain a supersedeas [stay of execution of the judgment], the seizure was released and there is no subject matter upon which

> the judgment of this court could operate and give relief to the appellant.

Canal Steel, 48 F.2d at 213. The rule in Canal Steel was first adopted by the Ninth Circuit in Martin v. The Bud, 172 F.2d 295, 296 (9th Cir. 1949). There, the court stated the case was moot because the res was released and "[n]o supersedeas bond was filed, nor was any stay of execution obtained." Id. SSA failed to obtain a stay and thus the posting of any bond is ineffective to prevent execution of the judgment. The district court is without jurisdiction to provide any relief for SSA as the res involved in the attachment has been released rendering an appeal to this court as moot.

III.

CONCLUSION

We hold that when a plaintiff asserts quasi in rem jurisdiction over a defendant by virtue of a Rule B attachment, and the

plaintiff has failed to obtain a stay of execution of the judgment which includes the condition of posting a supersedeas bond for that stay, once the district court dismisses the action and releases the security, it loses jurisdiction. Any appeal from that dismissal is moot.

DISMISSED.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STEVEDORING SERVICES OF AMERICA, A Washington corporation,	No. 87-4129 87-4195
Plaintiff-Appellant,	DC No. CV-87-885-FR
v.	ORDER
ANCORA TRANSPORT,N.V.; ARMILLA INTERNATIONAL, N.V.; ARMILLA INTERNATIONAL (LONDON),LTD, and ARMILLA INTERNATIONAL (LONDON),LTD, foreign corporations, each d.b.a. itself or one of the above-named defendants,	
Defendants-Appellees.	

Filed August 7, 1991

Before: Warren J. Ferguson, Melvin Blunetti and Diarmuid F. O'Scannlain, Circuit Judges.

ORDER

The opinion filed September 7, 1989 is withdrawn.

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STEVEDORING SERVICES OF AMERICA, A Washington corporation, Plaintiff-Appellant, v. ANCORA TRANSPORT,N.V.; ARMILLA INTERNATIONAL, N.V.; ARMILLA INTERNATIONAL (LONDON),LTD, and ARMILLA INTERNATIONAL (LONDON),LTD, foreign corporations, each d.b.a. itself or one of the above-named defendants, Defendants-Appellees.	No. 87-4129 87-4195 DC No. CV-87-885-FR OPINION

Appeal from the United States District Court for the District of Oregon
Helen J. Frye, District Judge, Presiding

Argued and Submitted
June 29,1989=Portland, Oregon

Filed September 7, 1989
Opinion Withdrawn August 7, 1991
Filed August 13, 1991

Before: Warren J. Ferguson, Melvin Brunetti and Diarmuid F. O'Scannlain, Circuit Judges.

Opinion by Judge Brunetti

SUMMARY

JURISDICTION/APPEALS

Dismissing an appeal for lack of personal jurisdiction, the court of appeals held that when a plaintiff asserts quasi in rem jurisdiction over a defendant under a Rule B maritime attachment, and the plaintiff has failed to obtain a stay of execution of the judgment that includes the condition of posting a supersedeas bond for that stay, once the district court dismisses the action and properly releases the security, it loses jurisdiction.

Appellant Stevedoring Services of America (SSA) challenged the district court's release of garnishment of funds held by Sunrise Shipping. SSA had a stevedoring contract to unload cargo from a vessel, which the charter's agent refused to pay. SSA argued that the agent never disclosed that Ancora Transport, N.V. was the principal, that all its negotiations were with the agent, and that

it was only after it rendered services that the agent took the position that it had acted as a managing agent for Ancora. SSA garnished funds held by Sunrise Shipping, the husbanding agent for another vessel. The funds represented payment by one agent as agent for another in London. SSA argued that the London agent was not an actual company. However, Ancora claimed that the funds garnished by SSA were not funds of Ancora, and thus, not proper funds to attach for SSA's payment of services for unloading cargo. The district court ordered garnishment under Rule B of the Federal Rules of Civil Procedure Supplemental Rules for Certain Admiralty and Maritime Claims and issued an order to show cause. After a hearing, the district court released the funds. SSA appealed and posted a stay bond on the release of attachment. The district court subsequently denied the motion for reconsideration and lifted the stay. SSA

appealed, arguing liability from the agent to SSA for an undisclosed principal.

[1] Maritime attachment (Rule B) is to obtain jurisdiction of the respondent in personam through his property and assure satisfaction of any decree in libelant's favor. Although jurisdiction through maritime attachment is denominated "in personam," it is clear that, absent personal service or an appearance by defendant, the judgment had is in the nature of quasi in rem. [2] In admiralty, as in civil law, the court's "in personam" jurisdiction over a defendant depends upon the latter's contacts with the forum and the correct service of process, and must meet constitutional requisites of due process. Here, the district court only asserted quasi in rem jurisdiction over the defendants through the garnishment of the funds held by Sunrise Shipping.

[3] While it is true that SSA was

free to assert both quasi-in rem and in personam jurisdiction by serving the defendants not in that district but in the state, SSA alleged no facts in its complaint asserting Ancora was subject to personal jurisdiction of the court, nor did it properly serve it to obtain personal jurisdiction. [4] SSA asked the court to reinstate the Rule B writ and allow it to try its claim; however, in quasi in rem jurisdiction, the court cannot reattach the res once it is properly released. [5] The court agreed with Ancora that the case had to be dismissed because the attachment was lifted and no basis for jurisdiction over them remained. [6] The court noted that under Rule C of the Supplemental Rules actions for in rem attachment, where the court has released the vessel or disbursed funds received from sale of the vessel, the appeal was dismissed. The Ninth circuit has applied this rule to actions under Rule B as well

as Rule C. While an inappropriate release of the res by the district court would be "improper" and thus would not destroy this court's jurisdiction for appeal and remand, the court was not prepared to hold that the district court's release in this case was in error.

[7] The court noted that the filing of a maritime in personam claim is not the equivalent of personal jurisdiction over the party. Attachment provides a limited substitute for the personal jurisdiction over the party and the release of attached property affects only this personal jurisdiction.

[8] SSA claims to have preserved in rem jurisdiction on appeal by complying with the rule announced in Alyeska and posting bond before the security was released. However, the posting of the bond was only a condition for obtaining the stay. The bond itself did not create jurisdiction and once the stay was

vacated, the stay bond was released and of no further force or effect. [9] Therefore, the district court was without jurisdiction to provide any relief for SSA as the res involved in the attachment had been released.

COUNSEL

Gordon T. Carey, Jr., Portland, Oregon, for the plaintiff-appellant.;

Paul N. Wonacott, Wood, Tatum, Mosser, Brooke & Landis, Portland, Oregon, for the defendants-appellees.

OPINION

BRUNETTI, Circuit Judge:

Stevedoring Services of America (SSA) appeals the district court's release of garnishment of funds held by Sunrise Shipping. The district court found that the garnished funds did not belong to SSA's debtor. We dismiss the appeal for lack of personal jurisdiction over the defendant.

FACTS AND PROCEEDINGS

SSA had a stevedoring contract to unload cargo from the vessel M/V RISAN in San Diego from October 30 to November 4,1986. An outstanding balance of $59,000 remains on the contract for services and Armilla (Rotterdam) has refused to pay. Appellees contend that SSA's contract was with Ancora Transport, N.V., a Netherlands Antilles corporation, which was RISAN's charterer, with Armilla (Rotterdam) acting as agent. SSA contends that Armilla (Rotterdam) never disclosed that Ancora was the principal, that all its negotiations were with Armilla (Rotterdam), and that it was only after it rendered services that Armilla (Rotterdam) took the position it had acted as a managing agent for Ancora. In fact, SSA alleges that Armilla (Rotterdam) told them that its agent in the U.S. was Armilla (Houston), leading them to believe that Armilla (Rotterdam) was the principal.

SSA garnished funds held by Sunrise

Shipping, the husbanding agent for the vessel M/V CONTENDER ARGENT, docked at the time at the Port of Vancouver, Washington. The funds represented payment by Armilla (Rotterdam) as agent for Armilla (London). SSA contends, however, that Armilla (London) is not an actual company as it has no offices, no employees, no bank account and no evidence that it exists. However, the appellees claim that Armilla (London) is a legitimate company, that the funds garnished by SSA are not funds of Ancora, and thus, not proper funds to attach for SSA's payment of services for the M/V RISAN.

The district court ordered the issuance of a writ of garnishment and a temporary restraining order pursuant to Rule B of the Federal Rules of Civil Procedure Supplemental Rules for Certain Admiralty and Maritime Claims (Rule B) and issued an order to show cause. After a hearing the district court ruled that SSA

failed to show that the funds belonged to its debtor and released the funds. SSA appealed and at the same time, asked the district court to reconsider its ruling pending additional discovery or in the alternative for a stay and posted a stay bond. District Judge Panner stayed the release of attachment pending the return from vacation of Judge Frye who had released the garnished funds. Judge Frye subsequently denied the motion for reconsideration and lifted the stay. This court stayed the matter temporarily pending disposition of SSA's petition for mandamus, then denied the stay and the writ of mandamus and suggested that the appeal was untimely because it was filed before the motion to reconsider. We ultimately decided that SSA's appeal was not untimely, that the motion for reconsideration did not toll the filing time for notice of appeal, and denied appellees' motion to dismiss for lack of

jurisdiction without prejudice to renew it in its answering brief on appeal.

SSA appealed the district court's ruling and alleged that Armilla (Rotterdam) was liable to SSA as an agent for an undisclosed principal. SSA further contends that the trial court abused its discretion in not allowing further discovery and alleges a due process violation if the appeal is dismissed.

II.

DISCUSSION

1. Appellate Jurisdiction

First, this court has jurisdiction to determine jurisdiction over the parties or the subject matter of a suit. Ilan-Gat Engineers, Ltd., A.G./S.A. v. Antigua Intern. Bank, 659 F.2d 234, 239 (D.C. Cir. 1981) (citing United States v. United Mine Workers, 330 U.S. 258, 290 (1947)). Also, we may hear appeals from an order quashing a writ of attachment. Swift & Co. Packers v. Compania Colombiana Del Caribe, 339

U.S. 684, 688-89 (1950) (order vacating attachment reviewable under collateral order doctrine); Polar Shipping, Ltd. v. Oriental Shipping Corporation, 680 P.2d 627, 630 (9th Cir. 1982) (dismissal of action vacating attachment was appealable); Chilean Line Inc. v. United States, 344 F.2d 757, 759 (9th Cir. 1965) (denial of attachment has same effect as vacating of previously granted attachment and is appealable as property may be irrevocably lost by the time the issue is resolved at trial).

2. Jurisdiction Over the Parties.

[1] SSA began its action against Armilla (Rotterdam) by process of maritime attachment levied against alleged Armilla (Rotterdam) assets that were being held by Sunrise Shipping for servicing the M/V CONTENDER ARGENT. Maritime attachment procedure is governed by Rule B which provides (in part):

With respect to any admiralty or

> maritime claim in personam a verified complaint may contain a prayer for process to attach the defendant's goods and chattels, or credits and effects in the hands of garnishees to be named in the process to the amount sued for, if the defendant shall not be found within the district .... Supplemental process enforcing the court's order may be issued by the clerk upon application without further order of the court.

Fed. R. Civ. P. Supp. Rules for Certain Admir. and Maritime Claims Rule B(1) (West 1989). Maritime attachment has two purposes: 1) to obtain jurisdiction of the respondent in personam through his property and 2) to assure satisfaction of any decree in libelant's favor. Polar Shipping Ltd., 680 F.2d at 636-37. Although jurisdiction achieved through

maritime attachment is denominated "in personam," it is clear that, absent personal service or an appearance by defendant, the judgment had is in the nature of quasi in rem. Teyseer Cement Co. v. Halla Maritime Corp., 794 F.2d 472, 477 (9th Cir. 1986); East Asiatic Co., Ltd. v. Indomar, Ltd., 422 F. Supp. 1335, 1341 (S.D.N.Y. 1976). Quasi in rem proceedings are begun by attachment or other seizure of the property when the court has no jurisdiction over the person of the defendant, but has jurisdiction over a thing belonging to him or over a person who is indebted to, or owes a duty to the defendant. Teyseer, 794 F.2d at 477; Belcher Co. of Alabama, Inc. v. M/V Maratha Mariner, 724 F.2d 1161, 1163-64, (5th Cir. 1984); East Asiatic Co., Ltd., 422 F. Supp. at 1339.

[2] In admiralty, as in civil law, the court's in personam jurisdiction over a defendant depends upon the latter's con-

tacts with the forum and the correct service of process, East Asiatic Co., Ltd., 422 F.Supp. at 1339, and must meet the constitutional requisites of due process. Armada Supply Inc. v. Wright, 858 F.2d 842, 848-49 (2nd Cir. 1988). This issue was not dealt with in the district court. The district court only asserted quasi in rem jurisdiction over the defendants through the garnishment of the funds held by Sunrise Shipping.

[3] While it is true that SSA was free to assert both quasi in rem and in personam jurisdiction by serving the defendants not in that district but in the state, SSA alleged no facts in its complaint asserting appellees were subject to personal jurisdiction of the court, nor did they properly serve them to obtain personal jurisdiction. SSA says it served appellees by telex as directed by the district court; however, it takes more than telex service to gain personal

jurisdiction of appellees. Appellees made a limited appearance in the district court to specifically address the garnishment and "to reserve challenges to jurisdiction later" and so did not waive their right to protest personal jurisdiction. They also alleged no permissive counterclaims which might subject them to the jurisdiction of the court. See Teyseer, 794 F.2d at 478; Trans-Asiatic Oil Ltd., S.A. v. Apex Oil Co., 804 F.2d 773, 778-79 (1st Cir. 1986). "Even if service is made on an appropriate corporate agent, it is ineffective unless the corporation is subject to suit in the state where service is made." C. Wright, Federal Courts, at 417 (West 1983); see World Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980).

[4] SSA asks us to reinstate the Rule B writ and allow it to try its claim, however, in quasi in rem jurisdiction, we cannot reattach the res once it is properly released. See Swift & Co.

Packers, 339 U.S. at 689; Polar Shipping, 680 F.2d at 637 ("A ship may be here today and gone tomorrow, not to return for an indefinite period, perhaps never."). This is no unfair surprise to SSA. In its motion for reconsideration and to stay the vacation of the attachment in the district court, SSA stated "[a] stay is necessary so the court can preserve its quasi in rem jurisdiction, and so the court of appeals will have jurisdiction of an appeal."

[5] Appellees contend that this case must be dismissed because the attachment was lifted and no basis for jurisdiction over them remains. This argument has merit.

[6] Under Rule C of the Federal Rules of Civil Procedure Supplemental Rules for Certain Admiralty and Maritime Claims actions for in rem attachment, where the court has released the vessel or disbursed funds received from sale of the vessel,

the appeal was dismissed. Farwest Steel Corporation v. Barge Sea-Span, 241, 769 F.2d 620, 621 (9th Cir. 1985) ("Under the prevailing rule, the release or removal of the res from the control of the court will terminate jurisdiction, unless the res is released accidentally, fraudulently, or improperly."). The Ninth Circuit has applied this rule to actions under Rule B as well as Rule C. See Teyseer, 794 F.2d at 476. The exception to the rule does not apply here because the res was not released accidentally, fraudulently, or improperly. While an inappropriate release of the res by the district court would be "improper" and thus would not destroy this court's jurisdiction for appeal and remand, see The RIO GRANDE, 90 U.S. 458, 463-5 (1875), we are not prepared to hold that the district court's release in this case was in error. After providing SSA an opportunity to show cause why the writ of garnishment should not be vacated, the

district court found that SSA failed to meet its burden and that there was no connection between the garnished funds and the defendant sufficient to confer personal jurisdiction. That finding was not clear error, hence, jurisdiction is lacking. See Stock West, Inc. v. Confederated Tribes of the Colville Reservation, 873 F.2d 1221, 1225 (9th Cir. 1989) (clearly erroneous standard of review applies to factual findings on jurisdictional issues).

[7] In Teyseer Cement Co. v. Halla Maritime Corp., 794 F.2d 472 (9th Cir. 1986), the plaintiff argued that the action was in personam and the release of the security was irrelevant. Teyseer, 794 F.2d at 476. As here, the jurisdiction in Teyseer was also obtained by a Rule B writ of attachment, and the defendant in that case appeared specially under Rule E of the Supplemental Rules. Id. We held that because the district court had released

the res, they could render no relief to the plaintiff if they remanded to the district court because the security had been released. Teyseer had not sought a stay of the order. Because the defendant appeared specially, the court concluded it had no personal jurisdiction of the defendant. The filing of a maritime in personam claim is not the equivalent of personal jurisdiction over the party. "Attachment provides a limited substitute for the [personal jurisdiction over the party] and the release of attached property affects only this [personal] jurisdiction." Id.

When the sole basis of jurisdiction over a defendant is quasi in rem, the court derives its jurisdiction over the defendant solely from its authority over the attached property or its substitute security. Once that property or its substitute security is released, the court has no jurisdiction over the

defendant.

Teyseer, 794 F.2d at 477.

[8] SSA claims to have preserved in rem jurisdiction on appeal by complying with the rule announced in Alyeska Pipeline Service Co. v. Vessel Bay Ridge, 703 P.2d 381, 385 (9th Cir. 1983), cert. dismissed, 467 U.S. 1247 (1984), and followed by Teyseer, 794 F.2d at 475, 478. Alyeska stated that

> When plaintiffs choose to proceed in rem they must take the necessary precautions to ensure that jurisdiction of the court is preserved. Plaintiffs always have the option of bringing these actions in personam as well as in rem, which would foreclose the loss of jurisdiction. Plaintiffs can also ask the trial judge to stay imposition of the judgment until they can move to preserve the

> jurisdiction of the court. If plaintiffs fail to exercise either of these options, they still have a chance to preserve jurisdiction by posting their own security before the security of the defendant is released.

Alyeska, 703 F.2d at 385 (emphasis added). Teyseer summed this up by stating at the conclusion of the opinion that

> when, as here, a plaintiff (1) asserts no basis for personal jurisdiction over a defendant other than the defendant's appearance, secured by a Rule B attachment; (2) the district court dismisses the action and releases the security; and (3) the defendant fails to obtain a stay of execution of the judgment or to post a supersedeas bond, the district court has been rendered

> powerless to impose a judgment in the event of a remand.

Teyseer, 794 F.2d at 478. It is the disjunctive language "fails to obtain a stay of execution of the judgment or to post a "supersedeas bond" which has caused the confusion for SSA here. SSA cites this rule as giving a plaintiff three "choices" or methods to preserve jurisdiction in an in rem proceeding.

First, SSA could move to stay release of the security. Second, SSA could try to establish in personam jurisdiction. Third, SSA could post a "supersedeas" bond, if appropriate.

SSA claims that by posting the $10,000 stay bond as ordered by District Judge Panner when he stayed District Judge's Frye's vacation of the writ of garnishment and releasing of the funds held by Sunrise Shipping, and that when it obtained a stay in the Ninth Circuit, that it complied with its third choice. Thus,

even though there is no "res," SSA contends jurisdiction has been preserved. Appellant misunderstands the nature of "posting security." The posting of the $10,000 stay bond was only a condition of obtaining the stay. The bond itself does not create jurisdiction and once the stay was vacated, the stay bond is released and of no further force or effect.

SSA, noting its confusion, states in a footnote to its citation to Alyeska that:

> This author and others have tried to determine precisely what this court meant by "post a bond." ... However, how can an in rem plaintiff post a bond if the vessel, or substitute security, is released? Similarly, how can a quasi in rem plaintiff post a bond after the attachment is vacated (other than a stay bond). Even if

> plaintiff posts a bond, what purpose does it serve? Supersedeas bonds are usually posted by defendants to forestall execution on a judgment pending appeal. See Rule 62(d), FRCP [sic].

SSA has seized upon the language in Alyeska as a salve for the vacation of the writ and the release of the res. As unclear as the language is, it is not susceptible to the appellant's interpretation.

A supersedeas bond is filed to obtain a stay of execution of the judgment. The effect of failure to file a supersedeas bond is that the execution of the judgment is not stayed pending appeal. See 9 J. Moore's Federal Practice 2d ed. § 207.02 (1987). Under Fed. R. Civ. P. 62(d), when an appeal is taken "the appellant by giving a supersedeas bond may obtain a stay...." The stay issued by the court is

only effective when the supersedeas bond is filed and approved by the court, and is only a condition to obtaining the stay.

[9] To clarify plaintiff's options in a Rule B case we must look at the origin of the rule in Alyeska. In so far as the language in Alyeska indicates that if plaintiffs failed to exercise either of the in personam or stay options, they still have a chance to preserve jurisdiction by "posting their own security before the security of the defendant is released," it is dictum without authority. Plaintiff, by posting a bond, cannot confer jurisdiction on the court where it does not otherwise exist.

Alyeska relied on language in Canal Steel Works, Inc. v. One Drag Line Dredge, 48 F.2d 212 (5th Cir.), cert. denied, 284 U.S. 647 (1931). Alyeska, 703 F.2d at 384. The court in Canal Steel stated the appeal in that case was moot because

[a]ppellant appealed, but did

> not sue out a supersedeas, and gave bond only for costs....[B]y the failure of the appellant to obtain a supersedeas [stay of execution of the judgment], the seizure was released and there is no subject matter upon which the judgment of this court could operate and give relief to the appellant.

Canal Steel, 48 F.2d at 213. The rule in Canal Steel was first adopted by the Ninth Circuit in Martin v. The Bud, 172 F.2d 295, 296 (9th Cir. 1949). There, the court stated that jurisdiction was lacking because the res was released and "[n]o supersedeas bond was filed, nor was any stay of execution obtained." Id. SSA failed to obtain a stay and thus the posting of any bond is ineffective to prevent execution of the judgment. The district court is without jurisdiction to provide any relief for SSA as the res

involved in the attachment, has been released.

III.

CONCLUSION

We hold that when a plaintiff asserts quasi in rem jurisdiction over a defendant by virtue of a Rule B attachment, and the plaintiff has failed to obtain a stay of execution of the judgment which includes the condition of posting a supersedeas bond for that stay, once the district court dismisses the action and properly releases the security, it loses jurisdiction.

DISMISSED.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STEVEDORING SERVICES OF AMERICA, A Washington corporation,	)	No. 87-4129 87-4195
Plaintiff-Appellant,	)	DC No. CV-87-885-FR
v.	)	ORDER
ANCORA TRANSPORT,N.V.; ARMILLA INTERNATIONAL, N.V.; ARMILLA INTERNATIONAL (LONDON),LTD, and ARMILLA INTERNATIONAL (LONDON),LTD, foreign corporations, each d.b.a. itself or one of the above-named defendants,	)	
Defendants-Appellees.	)	

BEFORE: FERGUSON, BRUNETTI, and O'SCANNLAIN, Circuit Judges

The panel has voted to deny the petition for rehearing. Judges Brunetti and O'Scannlain would reject the suggesting for a rehearing en banc. Judge Ferguson would recommend rejection of the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing, and

no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.